

**Notice of Allowability**

Application No.

10/647,649

Applicant(s)

CHEN ET AL.

Examiner

Art Unit

Manjunath N. Rao, Ph.D.

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the paper filed on 3-27-06.
2. ☒ The allowed claim(s) is/are 1-4, 6 and 8-10.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying Indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 1-04
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

Manjunath N. Rao, Ph.D.  
Primary Examiner  
Art Unit: 1652

**DETAILED ACTION**

Claims 1-4, 6-14 are currently pending and are present for examination. Claims 1-4, 6-10 are now under consideration. Claims 11-14 remain withdrawn from consideration as being drawn to non-elected invention.

***Election/Restrictions***

Applicant's election with traverse of Group I, Claims 1-4, 6-10 in Paper filed on 3-24-06 is acknowledged. The traversal is on the ground(s) that coexamination of Groups I and III would not be undue burden on the Examiner. Applicants argue that Group I claims (claims 1-4 and 6-10) and the Group III claims (claims 13 and 14) are related as the polynucleotide and the polypeptide encoded by the polynucleotide and corresponding to SEQ ID NOS. 1 and 2. Applicant, contends that while the polynucleotide and the polypeptide are separate and distinct, they are sufficiently interrelated that no undue burden would result from the simultaneous examination of these two groups of claims. This is not found persuasive because while the polynucleotide encodes the polypeptide and therefore may be concluded they are "interrelated", they are chemically, structurally and functionally distinct from each other and while the searches for the two groups may overlap, they are not coextensive. The search for Groups I and III would each require the search of subclasses, sequence databases and non-patent literature, unnecessary for the search of elected Group I. For example, while searching the patent databases, search of Group I would require search of subclass 536/23.2 and search of Group III would require search of subclass 435/183.

The requirement is still deemed proper and is therefore made FINAL.

Art Unit: 1652

Claims 11-14 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention, the requirement having been traversed in Paper filed on 3-24-06.

***Drawings (Not compliant)***

Drawings submitted in this application are accepted by the Examiner for examination purposes only. Applicant is required to comply with the sequence rules by inserting the sequence identification numbers of all sequences recited within the claims, figures and/or specification. It is particularly noted that applicant fails to provide the appropriate SEQ ID NO for sequences recited in figures 4 and 5 either in the figures or in the figure description. Applicant is urged to correct the drawings in response to this Office action. See particularly 37 CFR 1.821(d).

Examiner notes that applicants have filed color drawings. Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with John A. Castellano on 6-1-06.

The application has been amended as follows:

**In the claims:**

- A) Please cancel claims 7 and 11-14 without any prejudice.
- B) In claim 1, line 4, delete the word "an" and replace with "the".
- C) In claim 1, line 4, delete the phrase "shown in" and replace with "of".
- D) In claim 6, delete "A" and replace with "An isolated"
- E) In claim 8, line 1, delete "claim 7" and replace with "claim 6".

### ***Allowable Subject Matter***

Claims 1-4, 6, 8-10 are allowed.

The following is an examiner's statement of reasons for allowance: Following a diligent search it was determined that the prior art neither teaches nor suggests a polynucleotide encoding a polypeptide having  $\beta$ -1,3-glucanase activity as claimed in claims 1-4, 6 and 8-10.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

Art Unit: 1652

fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Manjunath N. Rao, Ph.D. whose telephone number is 571-272-0939. The Examiner can normally be reached on 7.00 a.m. to 3.30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy can be reached on 571-272-0928. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.



Manjunath N. Rao, Ph.D.  
Primary Examiner  
Art Unit 1652

June 2, 2006